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THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

SPECIAL

AUGUST, 1927

PAGES 1-24

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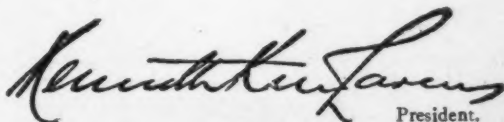
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

EXTRA EDITION

Usually The Corporation Journal is not published during the months of July, August and September. Matters of such import, however, have arisen in connection with The Federal Tax Service that we deemed it advisable to publish this extra number in order promptly to inform our readers. The announcement on page 5, and also that on pages 12-13, will be found of immediate interest to all those interested in tax matters.

All the matters regularly reported in The Journal will be found in their regular places.



President.

THE CORPORATION TRUST COMPANY

120 Broadway, New York

INCORPORATED UNDER THE BANKING LAW OF NEW YORK

AFFILIATED WITH

The Corporation Trust Company

15 Exchange Place, Jersey City

INCORPORATED UNDER THE TRUST COMPANY LAW OF NEW JERSEY

To represent a corporation in a statutory capacity either in the state of incorporation or states in which the company is licensed to do business; to assist counsel in preparing and filing incorporation and qualification papers, amendments to charter, etc.; to act as a corporation's transfer agent, registrar or trustee; to undertake the duty of keeping a lawyer, banker or business man constantly informed of official matters in connection with Federal taxes, various state and local taxes, stock transfer requirements, Federal Trade Commission

proceedings, Congressional activities, Federal Reserve Board matters, decisions of the Supreme Court of the United States—these are all heavy responsibilities for which sound financial standing as well as able business organization is required.

The Corporation Trust Company performs all these functions. Therefore this company feels it a duty to those from whom it asks such confidence to inform them of its financial standing. The latest consolidated statement is here shown.

CONSOLIDATED FINANCIAL STATEMENT

As of July 27, 1927

ASSETS

Cash on hand and in banks.....	\$1,250,368.42
Investments:	
Government Bonds.....	\$482,000.00
Municipal Bonds.....	117,911.37
Loans.....	8,900.00
	<hr/>
Plants, Property and Fixtures.....	608,811.37
Accrued Interest.....	15,134.96
Accounts Receivable.....	2,792.70
Anticipated Expense.....	148,373.25
	33,173.99

\$2,058,654.69**LIABILITIES**

Capital Stock.....	\$600,000.00
Surplus and Undivided Profits.....	422,931.26
Certificates of Deposit.....	56,183.00
Trustee Accounts.....	782,000.18
Deferred Earnings.....	99,035.00
Expense Payable and Special Reserves.....	98,505.25

\$2,058,654.69

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

SPECIAL

AUGUST, 1927

PAGES 1-24

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

THE CORPORATION TRUST COMPANY

120 Broadway, New York

*Affiliated with***The Corporation Trust Company System**

15 Exchange Place, Jersey City

Combined Assets a Million Dollars

Chicago, 112 W. Adams Street
 Pittsburgh, Oliver Bldg.
 Washington, Colorado Bldg.
 Los Angeles, Security Bldg.
 Cleveland, Union Trust Bldg.
 Kansas City, Searritt Bldg.
 San Francisco, Mills Bldg.
 Portland, Me., 281 St. John St.

Philadelphia, Land Title Bldg.
 Boston, 53 State Street
 (Corporation Registration Co.)
 St. Louis, Fed. Com. Trust Bldg.
 Detroit, Dime Sav. Bank Bldg.
 Minneapolis, Security Bldg.
 Albany Agency, 25 Washington Ave.
 Buffalo Agency, Ellicott Sq. Bldg.

and

The Corporation Trust Company of America

7 West Tenth Street, Wilmington, Delaware

Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

Being incorporated under the Banking Law of New York, and its affiliated company incorporated under the Trust Company Law of New Jersey, the combined assets always approximating a million dollars, this company —

—furnishes attorneys with complete, up to date information and precedents for drafting all papers for incorporation or qualification in any jurisdiction;

— acts as Transfer or Co-Transfer Agent or Registrar for the securities of corporations;

—files for attorneys all papers, holds incorporators' meetings, and performs all other steps necessary for incorporation or qualification in any jurisdiction;

—acts as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees;

— furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

—naturally (as a result of the great organization and facilities thus maintained) and necessarily (because of the important functions it performs for lawyers) keeps constantly informed of the official matters—legislation, court decisions, and the rulings and regulations of various governmental bodies—which relate to taxation, transfers of securities, regulation of business activities, etc., and furnishes such information, where desired, on an annual basis in the form of the following Services:—

— keeps counsel informed of all state taxes to be paid and reports to be filed by his client corporation in the state of incorporation and any states in which it may qualify as a foreign corporation;

The Federal Tax Service
 Corporation Tax Service, State and Local
 New York Tax Service,
 Congressional Legislative Service
 Federal Reserve Act Service
 Supreme Court Service
 Federal Trade Commission Service
 Stock Transfer Guide and Service

Special Announcement

A NEW Federal Tax Service is in process of being created. It will amalgamate, and where possible improve, the time-tried features of the two leading Services.

It has become self-evident that under present day conditions in the Federal tax field the great and pressing need of all taxpayers and their attorneys and accountants, and of the government officials, is ONE outstanding Service accepted and used by all concerned as the standard.

To produce such a Service The Corporation Trust Company, creator of the basic idea of continuing loose-leaf service, is contributing all the best features of its present Service, the genius of its Service staff, and the great resources of its nation-wide organization. Commerce Clearing House, a younger organization but one of remarkable energy and ability, is contributing all that its progressive staff has developed.

These two organizations represent all that is best in Tax Service as at present rendered. To unite the ideas of both into one Service, and to incorporate the additional refinements suggested by the practical experience of users during the past year, and to make the resulting NEW Service one that will work simply and easily for the user regardless of what Service he is now most accustomed to—this was a task for which no ordinary skill was sufficient. To accomplish it, and to leave no room for doubt that when done it would be done in the best possible manner, a committee of

outstanding users of tax service, reflecting in its personnel the experience and needs of the lawyer, the accountant, and the government official, was retained to work with the Service Staffs of the two organizations mentioned. Merely to scan the names of this joint committee is sufficient to guarantee that the final product will be the very acme of what a Tax Service should be to meet every need:

The Staff of The Corporation Trust Company.

The Staff of Commerce Clearing House.

Arthur Andersen, Chicago.

Member of firm of Arthur Andersen & Company, Certified Public Accountants.

Will R. Gregg, New York.

Member of the law firm of Dunnington, Walker & Gregg, New York; formerly of the office of the Solicitor of Internal Revenue.

George E. Holmes, New York.

Member of the law firms of Holmes, Paul & Havens, New York, and Holmes, Brewster & Ivins, Washington, D. C.; Author of "Holmes on Taxation."

J. Gilmer Korner, Lawyer, Washington, D. C.

Lately resigned chairman of the United States Board of Tax Appeals.

Roswell Magill, New York.

Professor of Law, Columbia University; Former Chief Attorney

in the United States Treasury Department; Special Assistant in the preparation of the 1924 Income Tax Act and Regulations issued thereunder.

Hugh Satterlee, New York.

Member of the law firms of Weill, Wolff & Satterlee, New York, and Weill, Wolff, Satterlee & Blakely, Washington, which are associated with Weill & Blakely, Philadelphia; Chairman of the Committee on Federal Taxation of the American Bar Association; former assistant Solicitor of Internal Revenue.

The new Service will be issued under the joint auspices of The Corporation Trust Company and Com-

merce Clearing House, a new company to be formed by those two organizations for the purpose. This new Company, to be known as Commerce Clearing House, Inc., Loose-Leaf Service Division of The Corporation Trust Company, will also take over and issue other services now issued by both organizations.

The present Services, however, of both organizations will be continued in their present form to the end of the current year.

A detailed announcement of the plan and scope of The Federal Tax Service as finally perfected and as it will issue for 1928, will be made shortly.

Domestic Corporations

Arkansas.

Contract of promoters. The Supreme Court of Arkansas says it is true the general rule is that, since the promoters of a corporation are not in any legal sense its agents before it comes into existence, a contract made by them is not binding on the corporation when formed unless it is then ratified. To prevent fraud and imposition and in order to do substantial justice, courts of equity have ingrafted an exception on the general rule, which as stated in *Little Rock & Ft. Smith Ry. Co. v. Perry*, 37 Ark. 164, amounts to this: "That where the formation of a corporation was in contemplation, and the promoters of the corporation were taking initiatory steps to perfect its organization, and obtain a charter, and provide in advance the means necessary for its successful operation, all contracts made by such promoters, for the benefit of the future corporation, and which were reasonable and proper to put it in operation, and the benefits of which were afterwards accepted by the corporation, became binding on the corporation without any formal contract to pay." *Brace v. Oil Fields Corporation et al.*, 293 S. W. 1041. *Gaughan & Sifford*, of Camden, for appellant. *Albert L. Wilson*, of El Dorado, for appellees.

California.

Contract for division of profits made prior to incorporation upheld. This is an action to recover profits made by a corporation in which the parties to the action were the sole stockholders being founded on a contract executed by them providing for the organization of the corporation and for the division of the profits between the parties on the basis of their respective stock interest. The California District Court of Appeals, (First District, Division 1) in reversing an adverse judgment against the plaintiff says that an agreement made by the persons interested in contemplation of incorporation, where the interests of others are not affected, controls the conduct of the corporation's affairs, and that, if necessary to enforce the provision in the agreement for division of profits, the corporate fiction will be ignored. An agreement made by persons interested or who really represented the interests of those afterwards incorporated, and whose agreement was in anticipation of the formation of the corporation, and was carried out by it and recognized by it, bound the parties to the agreement. The corporation, following such an agreement would be the mere agency of the associates created for the sake of convenience in carrying out the agreement as between those who made the bargain. *Conover v. Smith et al.*, 256 Pac. 835. *Livingston & Livingston*, and *Sapiro, Levy & Hayes*, all of San Francisco, for appellant. *E. L. Stockwell and Redman & Alexander*, all of San Francisco, for respondents.

Canada.

Secured creditor; liquidation of company. The following headnote appears before a decision by the Supreme Court of Canada in the *Dominion Law Reports*, in a case involving the liquidation of a company: "A secured creditor of a company in liquidation may either keep his securities and stay out of the liquidation or value or surrender his securities and come into the liquidation. If he does the former and subsequently gives the liquidator authority to realize the securities for him the latter does so as agent and not *qua* liquidator and a surety for the liquidator *qua* liquidator is not liable for the embezzlement by the liquidator *qua* agent of the proceeds of the securities." *McFarland v. London & Lancashire Guar. & Acc. Co.*, 3 D. L. R. 67.] *E. Lafleur*, of Montreal, for appellant. *W. N. Tilley*, of Toronto, for respondent.

Connecticut.

Subscription to stock. In an action to secure, among other things, cancellation of a subscription contract for shares of stock, it appeared that the subscription called for units of stock and that the corporation was unable to deliver the common stock necessary with the preferred to make up the unit. In this connection the Supreme Court of Errors

of Connecticut says that if, in agreeing to sell and deliver to the plaintiff 100 units of its stock, each unit to consist of 2 shares of preferred stock, par \$100, and one share of no par value common stock, the corporation contracted to do something which it had no power to do, its contract was void, and the plaintiff was entitled to so treat it and to reclaim the consideration with which she parted. The court further says that if the rights of creditors are not involved, the general rule is that the omission of essential steps prescribed by the statute authorizing an increase of capital stock will entitle subscribers for the increased stock to avoid their subscriptions and recover what they have paid, unless they are estopped. In order to deprive the plaintiff of the benefit of this rule she must have so assumed the position and exercised the rights of a stockholder, and manifested such acquiescence as to amount to a ratification and estoppel, or been guilty of laches. *Taylor v. Lounsbury-Soule Co.*, 137 Atl. 159. Jackson Palmer, Daniel E. Ryan, C. Milton Fessenden, and Matthew H. Kenealy, all of Stamford, for appellant. Harrison Hewitt and Charles A. Watrous, both of New Haven, for appellee.

Kansas.

Pledge of stock. It is not necessary to the validity of a pledge of shares of corporate stocks that the pledgee should cause or require them to be transferred on the stock register of the corporation, nor that any memorandum thereof should be made on the books of the company. In addition to the above the Supreme Court of Kansas further says that a pledgee, to whom shares of corporate stock have lawfully been delivered to secure the payment of certain indebtedness due him by the owners of such stock, has a right to such stock superior to that of a judgment creditor, who sought to subject the stock to execution sale to satisfy a judgment indebtedness against the pledgors. *Bailey v. Pierce et al*, 255 Pac. 37. George Gardner, of Wichita, for appellant. E. L. Foulke, James B. Nash, and Roy H. Wasson, all of Wichita, for appellee.

Massachusetts.

By-law requiring offering of stock to corporation. Special administrator. This is a bill in equity against the special administrator of the estate of a decedent to compel him to transfer to a corporation certain shares of its stock, in accordance with, as it claims, its by-laws. The Supreme Judicial Court of Massachusetts, in holding that the transfer could not be compelled, says that assuming that the corporation had the authority to impose the restrictions contained in the by-laws and printed on the stock certificate, that Touchet, his "executor, administrator or assignee" was bound to offer the stock for appraisal and the corporation had the right to purchase it, it does not follow from this that the defendant, who is not the executor, administrator or assignee of Touchet, but who is the special administrator of his estate, would be obliged to comply with the by-law. The restriction is confined to the executor, administrator or assignee; it does not expressly or by implication include the special administrator. The powers and duties

of a special administrator, are to preserve the personal property of the deceased for the executor or administrator when appointed, and for that purpose may commence, maintain and defend suits. In the case at bar the special administrator had no authority to surrender the stock to the corporation. *Albert E. Touchet, Inc. v. Thompson*, 156 N. E. 41. J. H. Devine and S. Vaughan, both of Boston, for appellant. G. F. McKelleget and J. C. Thompson, both of Boston, for appellee.

New York.

Stock subscription. This is an action by the trustee in bankruptcy of the American Railway Brotherhood Association, Inc., to recover the balance of an unpaid subscription for stock in the corporation. The agreement provided that the shares of stock should be dated and issued when the payments were completed and it is contended that there can be no recovery in this action, because the corporation is bankrupt and a stock certificate cannot be issued, and, even if it could be issued, that it would be worthless. On this the New York Supreme Court, Appellate Division (Fourth Department) says that when the defendant entered into the subscription agreement and paid 10 per cent. of the par value of the stock subscribed for, he became a stockholder, subject to all of a stockholder's liabilities, even though a certificate of stock was never issued to him. The trustee in bankruptcy had authority to bring and maintain this action upon the stock subscription. The subscriber, when he entered into the subscription agreement, incurred a debt which could have been enforced by the corporation, and may now be enforced by its trustee in bankruptcy. *Allen v. Ryan*, 221 N. Y. Supp. 77. John Griffin, of Hornell, for appellant. James O. Sebring, of Corning, for respondent.

Ohio.

Resolution of board fixing salaries, etc., adopted by vote of interested directors held illegal. Under single annual resolutions adopted by a board of five directors, salaries and extra compensation were fixed for three officers, who were also members of the board and as such voted for the resolutions. The extra compensation so fixed was based upon the annual earnings of the company, after payment of certain per centum dividends on the issued stock of the corporation. On this, the Supreme Court of Ohio says that since the resolutions were adopted by aid of the vote of the three interested directors, such resolutions are illegal and not sufficient upon which to base an action by the officer seeking to recover such extra compensation, after having voted in favor of the resolution. *Briggs v. Gilbert Grocery Co.*, 156 N. E. 494. Briggs & Briggs, of Cleveland, and Edgar G. Millar, of Portsmouth, for plaintiff in error. Bannon & Bannon, of Portsmouth, for defendant in error.

Oklahoma.

Bonds, issuance of. A corporation can only issue bonds at the

instance and under the direction of its board of directors, and the pledging of bonds by an officer of the corporation, which have been retired, to secure outstanding indebtedness of the corporation, is unauthorized. In addition to the above The Supreme Court of Oklahoma further says that one who having no interest to protect, voluntarily attempts to purchase bonds of a corporation after said bonds have been paid, in excess of the authority of the corporation, cannot be subrogated to the rights of the original bondholders under their deed of trust as against a subsequent mortgagee, in the absence of proof that in the transaction by which he acquired said bonds he acted under an honest mistake of a material fact, or that he was imposed upon in some manner so as to justify the intervention of equity. *Bollman et al. v. Snell et al.*, 256 Pac. 737. *Ellis A. Robinson, Victor C. Mieher, and Quincy J. Jones, all of Tulsa, for plaintiffs in error. Humphrey & Campbell, of Tulsa, for defendants in error.*

Pennsylvania.

Blue sky law. Officers of corporation selling its stock. In this action certain officers of a foreign corporation were charged with having unlawfully solicited subscriptions for the sale of and sold shares of stock of the corporation without being registered as a dealer or having secured a certificate. The Supreme Court of Pennsylvania in holding that the statute did not apply to such a case says that a careful study of the entire act, having in mind the mischiefs it was designed to correct, leads to the conclusion that it is dealers who engage in the sale of securities for profit who are comprehended in its terms, not corporate officers such as defendants are averred to be, disposing of the corporation's own capital stock. *Commonwealth v. Pastor et al.*, 136 Atl. 862. *Sidney H. Mandel and Morris Wolf, both of Philadelphia, for appellants. Wm. Y. C. Anderson, Deputy Atty. Gen., John H. Maurer, Asst. Dist. Atty., and Charles E. Fox, Dist. Atty., both of Philadelphia, and George W. Woodruff, Atty. Gen., for the Commonwealth.*

Wisconsin.

Salaries of officers. In an action by a stockholder against the directors of a corporation to recover alleged excess salaries paid to officers, it appeared that certain provisions of the articles of incorporation prevented any change in the salaries of the principal officers except by unanimous vote of the board of directors. On this the Supreme Court of Wisconsin says: "When Chesebro acquired control, he found the salaries of the officers fixed at \$6,500. To change them required the unanimous consent of the board of directors. That consent was not obtainable. Unless changed by unanimous consent, the salaries for the preceding year must obtain. Whatever the power of a court of equity to readjust the salaries of officers of a corporation, there is no ground upon which the directors here may be required to pay back any portion of the salaries of these officers, which were fixed by force of the articles of incorporation, and which they had no power to change."

Ehaney v. Chesebro et al., 213 N. W. 315. Collins & Collins, of Sheboygan, for appellants. Charles Voigt, of Sheboygan, for respondent.

Foreign Corporations

Alabama.

Service on secretary of state after withdrawal of foreign corporation.

In an action to enforce personal liability against a foreign corporation, it appeared that the corporation prior to the commencement of the action had disposed of all its holdings in the state, had ceased to do any business therein by agent or otherwise and had formally filed in the office of the secretary of state its declaration of withdrawal from the state. In connection with service of process the Supreme Court of Alabama says that: "We gather from brief of counsel for appellant that the service here insisted upon as effective is that had upon the secretary of state, and much reliance is placed upon that portion of section 9426 of the Code of 1923, providing for service upon the secretary of state when the agent designated by a foreign corporation 'shall die, resign, remove from the state or his authority shall cease from any cause.' But these provisions must be viewed in the light of the Fourteenth Amendment to the Constitution of the United States, known as the due process clause of the Constitution as interpreted by the Federal Supreme Court. So viewed, we are of the opinion the language must be held applicable only to those foreign corporations still engaged in business in this state, and subject to the jurisdiction of our courts." The Court further cites the case of Philadelphia & Reading Co. v. McKibbin, 243 U. S. 264, to the effect that "a foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there." Cowikee Mills v. Georgia-Alabama Power Co., 113 So. 4. Chauncey Sparks, of Eufaula, for appellant. W. H. Merrill, of Eufaula, for appellee.

Arkansas.

Action against foreign corporation by nonresident on cause of action arising outside state. A fair construction of the statute under the provisions of which foreign corporations are authorized to do business in the state upon the appointment of an agent upon whom process can be served, made primarily to secure local jurisdiction in respect of contracts made and business done within the state, would seem to require only that such corporations shall be subject to suit for any liability arising from or growing out of contracts made or business done in the state or necessarily incident thereto, and not that they shall be required by service of summons upon said agent to be subjected to suits of nonresi-

THE Corporation Trust Company and Commerce Clearing House announce the formation of Commerce Clearing House, Inc., Loose-Leaf Service Division of The Corporation Trust Company. The new company will publish the Loose-Leaf Services now published by both companies, with the exception of The Corporation Tax Service, State and Local, and The Stock Transfer Guide and Service, which The Corporation Trust Company will continue under its direct management.

COMME

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neys, Washington
JUSTUS L. SCHMIDT
Corporation at
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Corporation at

IRCE CLEARING HOUSE, INC.

Loose-Leaf Service Division of
The Corporation Trust Company

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Mr. ... President
Mr. ... Vice-President
Mr. ... Vice-President
Mr. ... Treasurer
Mr. ... Secretary and Sales Manager

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Mr. Mayer, Meyer, Austrian &
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Trust Company, New York
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Mr. ... Treasurer, The Corpo-
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Mr. ... Asst. Secretary, The
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Mr. ... Chicago Secretary, The
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Tax Service (CCH)
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Inheritance Tax Service
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dents of the state upon foreign causes of action, transactions, and causes of action arising outside the state and in no wise incident, related to, or connected with contracts made or business done in the state. In addition to this the Supreme Court of Arkansas further says: "We are not unmindful of the decisions of the courts of other states holding a different view and giving larger scope to statutes of like kind in their construction, but we do not think comity requires that our courts shall be unduly burdened with litigation of actions of nonresidents against foreign insurance corporations doing business here, upon causes of action arising entirely outside of our jurisdiction and having no relation whatever to the contracts made or business done by such foreign corporation within the state, under the requirements of our laws providing therefor." *National Liberty Ins. Co. v. Trattner*, 292 S. W. 677. *Abbott, Fauntleroy, Cullen & Edwards*, of St. Louis, Mo., and *N. F. Lamb*, of Jonesboro, for appellant. *Leahy, Saunders & Walther*, of St. Louis, Mo., and *Gautney & Dudley*, of Jonesboro, for appellee.

Connecticut.

Foreign corporations acting as executors and trustees. Chapter 207, Public Acts of 1927, amends Sec. 4969 of the General Statutes relative to foreign corporations acting as executors or trustees under wills in the state. Formerly the section provided that any foreign corporation authorized by its charter to act as executor or trustee and named as executor or trustee in the will of any resident of the state, may qualify and act as such executor or testamentary trustee in the state upon appointing the secretary of state and his successors as attorney for service of process. The section is amended to apply also to any such foreign corporation named as executor or trustee in the will of any non-resident leaving property within the state if similar domestic corporations are permitted to act in like capacity in the state where such foreign corporation has its domicile.

Kentucky.

Unqualified foreign corporation allowed to maintain action. In an action by an unqualified foreign corporation the lower court directed verdicts against the corporation because of its noncompliance. The Court of Appeals of Kentucky, in reversing the lower court says: "The record discloses that the directed verdicts in favor of appellee were based entirely upon the assumption of the court, gathered from many past opinions of this court, that a plaintiff corporation may not maintain an action or have a recovery where it has not complied with section 571, Kentucky Statutes. We have so held in the case of *Oliver Co. v. Louisville Realty Co.*, 156 Ky. 628, 161 S. W. 570, 51 L. R. A. (N. S.) 293, Ann. Cas. 1915C, 565; * * *. The rule laid down in the *Oliver Case*, supra, and adhered to in many subsequent cases, worked such great hardships, and afforded dishonest persons such easy means of committing fraud, that we have, after due consideration of the question by the whole court, decided to change the rule, and have so held in the

recent case of *Williams v. Dearborn Truck Co.*, 218 Ky. 271, 291 S. W. 388. This necessitates a reversal of the judgment in this case for new trial upon the merits." *Falls City Machinery & Wrecking Co. v. Sobel-Mark Furniture Co.*, 292 S. W. 814. Arthur C. Gunther, of Louisville, for appellant. Arthur B. Bensinger, of Louisville, for appellee.

New Jersey.

Suit by foreign corporation on contract made outside state. The Court of Errors and Appeals of New Jersey says that foreign corporations without complying with the provisions of the statute may maintain suits in New Jersey on contracts made outside of the state. In the instant case, the note involved was made payable to the order of the Wimple Auto Company, at the office of the Commercial Credit Corporation, New York, and was subsequently indorsed over to the latter. The note, therefore, became an obligation arising under the laws of the State of New York and hence was suable in the courts of New Jersey by the plaintiff, even though it was a foreign corporation at the time the action was brought. *Commercial Credit Corporation v. Boyko*, 137 Atl. 534. Green & Green, of Newark (Harry Green, of Newark, of counsel), for appellant. Feder & Rinzler, of Passaic, for respondent.

New York.

Purchasing in state held to be "doing business." In an action against Seidenbach's Inc., a foreign corporation, it appeared that the only business transacted by the corporation in New York was the purchase of goods to be sold at its store in Tulsa, Oklahoma. In holding the corporation to be "doing business" in the state the New York Supreme Court, Appellate Division, (First Department) says that: "In the case before us, defendant was engaged in the retail business of ladies' apparel in parts remote. It is perfectly true that it did not have a branch retail establishment in this state. But, to properly carry on its business in Tulsa, it was absolutely necessary for it to make purchases of goods to be sold by it at retail. These were made regularly and systematically in the City of New York, and to facilitate such transactions defendant had in fact established a place of business at 501 Seventh Avenue and proclaimed the existence of such place on its letter heads. Although the name on the door of the office selected by defendant was 'Mr. Seidenbach,' and not 'Seidenbach's Inc.,' this slight variance, under the circumstances, is of no legal significance. Indeed, the doctrine of estoppel might well be invoked in support of jurisdiction, in favor of a creditor dealing with defendant, in this situation." The Court further says that when, by continuous business activities through its officers or representative agents a corporation has signified its presence in the state, it should not be permitted to evade service. *Hartstein et al. v. Seidenbach's, Inc.*, 222 N. Y. Supp. 404. Siegel & Corn, of New York City (Isaac Siegel, of New York City, of counsel), for appellant. Benjamin A. Hartstein, of New York City, for respondents.

Suit against foreign corporation by nonresident. In an action against a foreign corporation by a non-resident, it appeared that all of its lines of railroad were without the state, and that it had never filed its charter in New York, nor received a certificate authorizing it to do business in the state. However, it appeared that, in accordance with the requirements of the New York Stock Exchange, it maintained an office for the conduct of its financial business in New York City and also maintained an office in that city for the sole purpose of soliciting freight and passenger business. The New York Supreme Court, Appellate Division (Second Department) says that section 47 of the General Corporation Law provides, among other things, that an action against a foreign corporation may be maintained by a non-resident where it is "doing business" in the state, and under the above facts the corporation was "doing business" in the state within the meaning of the statute. The court further says that the contention that this statute is invalid under the commerce clause of the Federal Constitution is unsound. *Murnan v Wabash Ry. Co.*, 221 N. Y. Supp. 332. C. D. Lewis, of White Plains (John Ambrose Goodwin and Leonard F. Fish, both of New York City, on the brief), for appellant. H. Brua Campbell, of New York City (Winslow S. Pierce, of New York City, on the brief), for respondent.

Texas.

Foreign corporation held to be "doing business." In an action by a foreign corporation, the Court of Civil Appeals of Texas, says that acting through an agent, the foreign corporation conducted business in the state, in this: That the agent delivered the merchandise of the corporation to its customers within the state; that the corporation was obligated under its contract with its customers in Texas to keep its goods, wares, and merchandise sold in Texas in repair for one year; and that the agent of the corporation for its sole benefit, did install, keep, and maintain the goods, wares and merchandise so sold by it; that the property sued for was shipped to the agent for the purpose of being sold and delivered in the state; that soon after the execution of the agency contract the corporation shipped direct to the agent the personal property sued for, together with other merchandise, for the purpose of exhibition and sale by the agent; that said property sued for, together with other property received from the corporation under the contract was exhibited by the agent and sold by him as such agent direct from the floor of the building in which located to various customers; that an initial payment was secured on each order out of which he retained his commission and forwarded the balance to the corporation; that the corporation paid the rent on the building, from which the property sued for and other merchandise was exhibited for sale and sold; that the agent in so representing and acting for the corporation, acted as its agent and was compelled, under his contract, to account for all sales; that although it was specially provided in the agency contract that all repairs of property so sold should be made at the corporation's factory, subsequent thereto the corporation instructed the agent, in writing, to

make such repairs, as its agent. *Wolforth et al v. A. J. Deer Co., Inc.*, 293 S. E. 590. Carpenter & Rosenfield, of Dallas, for appellants. Robert B. Seay, of Dallas, for appellee.

Taxation

New York.

Flat rate plan of inheritance taxation on non-resident decedents held unconstitutional. In a decision recently handed down the Court of Appeals holds that the statute imposing a tax on taxable transfers of the property of nonresident decedents, which is a modification of the method known as the "Matthews flat rate plan" is unconstitutional as being discriminatory between residents and nonresidents denying to the latter the privileges and immunities extended to citizens of the state. The Court says: If the testatrix had been a resident of New York, the transfer of these shares by will would have been subject to a tax of \$23.72 for each, or \$94.50 for all. The tax as to each would have been computed at the rate of one per cent, after allowance of \$5,000 the statutory exemption. Because the testatrix was a non-resident, the four shares must bear a tax of \$589.98. The question is whether such discrimination can be reconciled with that provision of the Constitution of the United States whereby "the citizens of each state" are declared to be "entitled to the privileges and immunities of citizens of the several states." Article 10-A, the statute rendered unconstitutional by this decision, contained the reciprocal provisions of the New York law. Therefore, the reciprocal provisions fall with the rest of the statute. *Smith v. State Tax Commission*. (Not yet officially reported.) Joseph F. McCloy of New York City, for appellant. Henry S. Manley, of Albany, for respondent.

In connection with the above decision the following notice was received by transfer agents and corporations holding permits to operate under the reciprocal provisions from the State Tax Commission:

STATE OF NEW YORK
DEPARTMENT
OF
TAXATION AND FINANCE
ALBANY

July 25, 1927.

Important Notice

On July 20 the Court of Appeals handed down a decision holding that Article 10-A of the tax law, imposing the transfer tax upon estates of nonresident decedents and containing in section 248-p the provisions for reciprocal death tax exemptions with other jurisdictions, is unconstitutional. This being so, you are advised that you are no longer

authorized to transfer property under the provisions of the general permit issued to you pursuant to Article 247-A of the Transfer and Estate Tax regulations of this Commission in cases where the nontaxability of the property is dependent upon the decedent's domicile in a state to which the reciprocal provisions aforesaid are applicable. Pending advice from the Attorney General it is not possible to advise you as to how to proceed to transfer New York taxables owned by decedents residents of reciprocal states. As soon as a determination of this question is reached due publicity will be given. You will consider the permit heretofore issued to you amended in accordance with the terms of this notice.

STATE TAX COMMISSION,

(Signed) By W. E. Stephens,

Deputy Commissioner.

Texas.

Forfeiture of charter for failure to pay franchise tax, does not dissolve corporation. The Court of Civil Appeals of Texas, makes the following comment regarding forfeiture of charter for failure to pay the tax: "We note that there is some evidence in this record that the charter of Harry Wiley & Co. had been forfeited by the secretary of state before the execution of the note sued on in the former suit for failure of the corporation to pay its franchise tax, but that would not have the effect to dissolve the corporation, as counsel for appellee seem to think. It is true that the corporation had no right to do business in this state after the forfeiture of its charter, and was subject to a penalty if it did so, but still the forfeiture of the charter could not have the effect to dissolve the corporation." *Adams v. First Nat. Bank of San Augustine*, 294 S. W. 909. S. M. Adams, of Nacogdoches, for appellant. J. R. Bogard, of San Augustine, for appellee.

Federal Tax Matters

Outstanding features of a few of the many interesting rulings and decisions reported recently in The Federal Tax Service of The Corporation Trust Company are briefly summarized here. The complete reports should be examined to determine the extent of their application. These decisions and rulings, it must also be remembered, are not necessarily final. The citations are all to the above-named Service.

Royalties paid under a Pennsylvania mining lease by a lessee coal company on account of tonnage mined to trustees as provided by a decedent lessor's will and by them distributed to the beneficiary named in the will so to receive, are, when

received by such beneficiary, income to her rather than the realization of a part of property received by bequest. United States District Court decision, Eastern District of Pennsylvania (Part 1, ¶4411). . . . The Board of Tax Appeals has no

authority to rule that no petition may be filed until the prescribed \$10 filing fee is paid, and so, jurisdiction of an appeal is not lost because the fee is not paid within the 60-day period, the petition itself having been received by the Board within such statutory period. United States Circuit Court of Appeals decision, Seventh Circuit (Part 1, ¶4453). . . . The income of a decedent received by him between the beginning of his taxable year and the date of his death is subject to tax although such period be less than twelve months.—No part of the New York transfer (inheritance) tax, even though paid during the calendar year of decedent's death, his returns having been on the calendar year basis, is deductible in determining the decedent's net income to the time of his death subject to tax. Revenue Act of 1918. United States Court of Claims decision (Part 1, ¶4484). . . . In a suit for recovery of taxes alleged to have been illegally collected, claim for refund having been duly filed, plaintiff is not restricted in his action in setting up grounds for recovery to the grounds urged by him in his claim for refund. Revenue Act of 1921. United States District Court decision, District of Massachusetts (Part 1, ¶4554). . . . Two corporations being "affiliated" within the meaning of the taxing statute for purposes of consolidated returns the sale to the public by one of such corporations of the stock of the other for an amount greater than that for which the assets of the second corporation had been acquired by the first does not result in the receipt of taxable income, being a capital transaction. United States District Court decision, District of Massachusetts (Part 1,

¶4596). . . . Current earnings of a corporation having been returned and the taxes paid thereon by the shareholders on the partnership basis on the theory that the corporation was a personal service corporation, suit will not lie for the recovery of the excess amount of tax thus paid founded on an allowed refund claim, it having been determined that the corporation was not entitled to personal service corporation classification, the corporation not having paid the taxes for which it was liable for the years in question. United States District Court decision, Western District of Washington, Northern Division (Part 1, ¶4607). . . . Specific deduction on account of "obsolescence" of good will or on account of loss of useful value of good will is not authorized. Revenue Act of 1918. United States District Court decision, Northern District of New York (Part 1, ¶4718). . . . The fees paid by surety corporations making application to be approved as sureties on surety bonds required by Pennsylvania State Courts of parties before them, to the "standing examiner" or "auditor" whose duty it is to inform such courts of the responsibility of such corporations, are not exempt from tax as "received by him as compensation for personal services as an officer or employee of a state, etc.", since to come within the exemption, the recipient not only must be an officer or employee of the state, etc., but the compensation itself must be paid by the state, etc., and such is not the case here. United States District Court decision, Eastern District of Pennsylvania (Part 1, ¶4775).

Contingent bequests to charitable, etc., institutions that may be defeated and so never ripen into

possession and enjoyment are too remote and uncertain to be taken into account in determining the value of the net estate for the purposes of the Act. Revenue Act of 1918. United States Court of Claims decision (Part 2, Estate Tax, ¶910). . . . The initiation fees and dues paid to a club the dominant purpose of which is "to

promote the interest of chemists and those interested in the science and application of chemistry" are exempt from tax, the social features of the club being incidental, and remotely so, to such predominant purpose. Revenue Act of 1918. United States Court of Claims decision (Part 2, Admissions and Dues Taxes, ¶7008). . . .

Notes

At the special request of President Coolidge the leading industrial and banking interests of the nation were called into conference with Secretary Hoover early in June by the Chamber of Commerce of the United States, for the purpose of putting into effect the suggestions of the administration as to increased credits to the business and agricultural interests in the Mississippi flood areas. A corporation was organized under the name of "Flood Credits Corporation," its capital stock being subscribed for by banking and business institutions throughout the country. For the incorporation of the company the State of Delaware was chosen and, as usual with important companies, the filing of papers and statutory representation was entrusted by the attorneys to The Corporation Trust Company.

The stockholders of The Pullman Company adopted a reorganization plan at the meeting held July 12. A new company, known as Pullman Incorporated, was organized under the laws of Delaware. Papers were filed for counsel, and the new company is represented in Delaware, by The Corporation Trust Company.

As this was the first certificate of incorporation to be filed in Delaware by an internationally known institution since the passage of the recent Delaware amendments, copies of the charter have been reprinted by The Corporation Trust Company, with permission of counsel, for free distribution to members of the bar. Requests may be sent to any office of The Corporation Trust Company.

The American Water Works and Electric Company, Incorporated, recently announced to its stockholders that the company had been reincorporated under the laws of Delaware, the new company to continue the business under the same management and assume all assets and liabilities. "The incorporation of the Company in Delaware," reads the president's announcement, "will mean an annual saving in franchise taxes, and under its new charter the Company should be able to finance its future growth with greater facility and economy. The stock of the Delaware corporation is not subject to inheritance taxes in Delaware when held by non-residents of Delaware."

The new company is, of course, represented in Delaware by The Corporation Trust Company.

The Corporation Trust Company filed with the Secretary of State, of Delaware, a certificate of incorpo-

ration of the Union Tobacco Company with a capitalization of 100,000 shares of preferred stock \$100.00 par value, 200,000 shares of class A stock no par value and 2,000,000 shares of common stock no par value.

Some Important Matters for August and September

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARKANSAS—Anti-Trust Affidavit due on or before August 1.—Domestic and foreign corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax due on or before September 1.—Domestic and Foreign Corporations.

Annual Report due on or before August 15.—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax due on or before September 1.—Domestic Corporations.

MARYLAND—Franchise Tax due on or before September 1.—Domestic Business Corporations.

MICHIGAN—Annual Report due during July or August.—Domestic and Foreign Corporations.

NEBRASKA—Annual Statement due on or before September 15.—Foreign Corporations.

NEW MEXICO—Annual Franchise Tax Report due on or before September 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before November 30.—Domestic and Foreign Corporations.

OREGON—Annual License Fee due within 30 days after July 15.—Domestic Corporations.

License Fee due between July 1 and August 15.—Foreign Corporations.

UNITED STATES—Third Installment of Income Tax due on or before September 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

- Analysis of Recent Amendments to Delaware Corporation Laws.** Complete text of these important new features together with explanation of their effect.
- What Constitutes Doing Business.** A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."
- Six Points to Watch in Incorporation.** A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.
- Two Notable Certificates of Incorporation.** Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.
- Certificate of Incorporation of Pullman Incorporated.** Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.
- Safeguarding Stock Transfers.** Dealing with the many pitfalls in transferring stock on a corporation's books.
- Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.
- Shares Without Par Value.** Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.
- Paying Too Much in Taxes.** Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary.
- When Doing Business Is Illegal.** A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.
- Revenue Act of 1926.** A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.
- Amendments to New Jersey Corporation Laws.** Full text of the ten amendments passed at the legislative session of 1927.
- Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.
- Lawyers' Preliminary Work Sheets.** Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.

Another Taxation Tangle Straightened Out

What The Corporation Trust Company did in The Federal Tax Service to give instant access to all the official information regarding the Income and other Federal taxes, it has now done for state and local taxes on corporations through The Corporation Tax Service, State and Local. This newest of The Corporation Trust Company's services covers every state and local tax payable by ordinary business corporations, in every state. It is kept constantly up to date. Each subscriber may select the states, and in each state the particular city, which he desires the Service to cover for him and the subscription price is based on the number so selected. Write today for complete information.

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Taxes

Income Taxes

General Property Taxes
—and any other taxes,
state or local, applying
to ordinary business cor-
porations.

and for each Tax—

Of what corporations re-
quired, exemptions, basis
of tax rate, when to be
paid and to whom, how
to obtain extensions, how
and where to appeal
from the assessing official
or body, reports required
and where and when to
be filed, and all the ap-
plicable official opinions,
rulings, definitions and
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carefully
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